

The Ontario Local Option Law.

Office of the Dominion Alliance

October, 1896.

This circular will set out, firstly, the mode of bringing a local option by-law into operation, and secondly, the provisions of the law when secured. The Ontario plebiscite showed that there is in most municipalities an overwhelming sentiment in favor of prohibition which may by wise action be made immediately effective.

The leader of the Ottawa Government has promised to take a plebiscite for the Dominion and to introduce a prohibitory law if the people demand it. The bill for the enactment of this plebiscite has not yet, however, been laid before Parliament. It will be some time before the plebiscite can be taken. Some further time must elapse before the prohibitory law can be enacted.

While not losing sight of the greater and more important measure, we can do much immediate good by the legislation referred to in this circular. Local option by-laws may be enacted during the coming winter so as to come into force on May 1st, 1897. There is therefore an opportunity open for important immediate restriction and curtailment of the liquor traffic.

1896

This work need not interfere with the other. It may help it. A local contest will rouse interest, unite temperance workers and develop temperance sentiment more effectively than could be done by any other form of campaign.

At the present crisis it would be very unwise to precipitate a contest in which a victory was not almost certain. There are places, however, where the recent vote shows so much strength of sentiment against the liquor traffic, that it would certainly be wise to take steps to have that sentiment made immediately effective.

I. Method of Procedure.

To bring into operation a prohibitory by-law it is necessary to have such by-law first passed by the municipal council of the municipality in which it is to prevail, and then to have it ratified by a popular vote of the municipal electors.

The active friends of moral reform in different localities are always the best judges of the time and plan for commencing operations. A meeting of workers should first be convened, to which representative, prominent men and women might be invited. All churches and temperance organizations should be requested to take part in such meeting. Clergymen of the different churches will nearly always be found willing to co-operate. At such a gathering the whole situation could be discussed, a committee or committees to direct campaign work appointed, and plans for action decided upon.

As has been stated in order to secure the benefits of this legislation the initiative has to be taken by the municipal councils. There are, however, very few councils that

would not do this if requested, as no representatives would like to be in the position of refusing to allow the people to vote upon the question.

In a municipality in which licenses are in force a prohibitory by-law will come into operation on the first day of May following its final passing; that is, on the expiration of the existing licenses. It is well, however, to have voting take place as long as possible before the time of the by-law's coming into force. Reasons will readily suggest themselves in favor of such a course.

In many cases it may be the wisest course to petition the municipal council to take action, so as to bring the matter fairly under notice, although the council may take action without this being done. The petition for this purpose may be signed by ratepayers or by residents as deemed best. It may be in the following terms, or to the like effect:

"To the Municipal Council of the.....of.....

GENTLEMEN:

The petition of the undersigned ratepayers of theof.....humbly sheweth that,

WHEREAS it is provided by the Statutes of Ontario, 53 Vic., cap. 56, sec. 18, that the council of any municipality may pass by-laws for the prohibiting of the sale of intoxicating liquor within the limits of such municipality, and may submit the same to the electors for ratification, and,

WHEREAS your petitioners believe that the enactment and enforcement of such a by-law would be in the interests of the material and moral welfare of the community.

THEREFORE your petitioners humbly pray that your honorable body will be pleased to pass such a by-law and submit the same to the electors of the.....of..... for ratification, in accordance with the provisions of the said section of the Statutes of Ontario."

The getting of a by-law through the council and attention to the details relating to the same, should be entrusted by temperance workers to the most influential

member of the council known to be favorable to the movement. The law relating to procedure is that which governs the voting on by-laws requiring the consent of electors of municipalities, and will be found in the Municipal Act commencing at section 293. Subjoined will be found a suitable form of by-law to be used for the purposes of this new legislation, also of a notice to be attached to the same when it is advertised.

The persons entitled to vote are those who are qualified at the election of members of the municipal council, their names are printed in the regular municipal voters' lists, and their qualifications are set out in sections 79 and following of the Municipal Act. Women whose names are on the voters' lists are entitled to vote as well as men.

It would be well to begin work even before the circulation of petitions, by the holding of one or more rousing public meetings, at which the new legislation would be fully explained and the duty of supporting it urged upon electors.

(Form of By-Law).

A BY-LAW

To prohibit the sale of liquor in the of

The Municipal Council of the of hereby enacts as follows:

1.—That the sale by retail of spirituous, fermented or other manufactured liquors is and shall be prohibited in every tavern, inn or other place of public entertainment in the said municipality, and the sale thereof is altogether prohibited in every shop or place in the said municipality other than a house of public entertainment.

2.—That the vote of the electors of the said of will be taken on the by-law by the deputy returning officers hereinafter named on the

.....day of One Thousand Eight Hundred and Ninety... , commencing at nine o'clock in the morning and continuing till five o'clock in the afternoon at the undermentioned places :

(Here follows the list of polling subdivisions, polling places and deputy returning officers).

3.—That on the.....day of.....A.D. 189... , at his office in the.....ofat the hour of..... o'clock in the.....noon, the reeve shall appoint in writing signed by himself, two persons to attend at the final summing up of the votes by the clerk, and one person to attend at each polling place on behalf of the persons interested in and desirous of promoting the passing of this by-law, and a like number on behalf of the persons interested in and desirous of opposing the passing of this by-law.

4.—That the clerk of the said municipal council of the of.....shall attend at..... at the hour of o'clock in the forenoon on the... day of..... A.D. 189.. to sum up the number of votes given for and against this by-law.

5 —This by-law shall come into operation, and be of full force and effect on and after the first day of May next after the final passing thereof.

Council Chamber... ..189..

(L.S.)

.....Reeve.

(Form of Notice.)

TAKE NOTICE that the above is a true copy of a proposed by-law which has been taken into consideration by the municipal council of theof..... and which will be finally passed by the said council in the event of the assent of the electors being obtained thereto, after one month from the first publication thereof in the..... the date of which publication was.....the.....day of, and at the hour, day and places therein fixed for taking the votes of the electors the polls will be held.

.....
Clerk.

2. Local Option Prohibition.

The enactment giving municipalities power to absolutely prohibit the retail sale of liquor is found in the Ontario Statutes 53 Vic., cap. 56, sec. 18, and is in the following terms :—

"The council of every township, city, town and incorporated village may pass by-laws for prohibiting the sale by retail of spirituous, fermented or other manufactured liquors, in any tavern, inn or any other house or place of public entertainment: and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment: Provided that the by-law before the final passing thereof, has been duly approved of by the electors of the municipality in the manner provided by the sections in that behalf of the Municipal Act.

"No by-law passed under the provisions of this section shall be repealed by the council passing the same, until after the expiration of three years from the day of its coming into force, nor until a by-law for that purpose shall have been submitted to the electors and approved by them in the same manner as the original by-law, and if any such repealing by-law (upon being submitted to the electors) is not so approved, no other repealing by-law shall be submitted for the like approval within the full term of three years thereafter."

POSITIVE PROHIBITION.

The right of the legislature to enact this law has been upheld by the Court of Appeal. It is at once simple, comprehensive and effective. Being a part of the so-called "License Act" of the Province of Ontario, it has no special machinery provided for its enforcement. A local option prohibitory by-law simply prevents the issue of liquor licenses. All the machinery and authority of the license law are available under it for the prevention of any liquor selling, as they are elsewhere for the prevention of unlicensed liquor selling. This is made very clear by

section 13 of the Liquor License Amendment Act of 1892, which is in the following terms :

“The sale or keeping for sale of liquors without license in any city, town, incorporated village or township in which there is in force any by-law for prohibiting the sale of liquors passed in pursuance of section 18 of the Act passed in the 53rd year of Her Majesty's reign, entitled “An Act to improve the Liquor License Laws,” shall nevertheless be a contravention of sections 49 and 50 of this Act ; and all the provisions respecting the sale or keeping for sale of liquor in contravention of said sections, and penalties and procedure in reference thereto, shall be of full force and effect in such municipality, notwithstanding such prohibitory by-law.

“Section 49 and 50 of this Act” referred to in the clause above quoted, are sections 49 and 50 of the Liquor License Act and are as follows :

49. No person shall sell by wholesale or retail any spirituous, fermented, or other manufactured liquors without having first obtained a license under this Act authorizing him so to do ; but this section shall not apply to sales under legal process or for distress, or sales by assignees in insolvency.

50. No person shall keep or have in any house, building, shop, eating-house, saloon, or house of public entertainment, or in any room or place whatsoever, any spirituous, fermented or other manufactured liquors for the purpose of selling, bartering or trading therein, unless duly licensed thereto under the provisions of this Act ; nor shall the occupant of any such shop, eating-house, saloon, or house of public entertainment, unless duly licensed, permit any liquors, whether sold by him or not, to be consumed upon the premises, by any person other than members of his family, or employees, or guests not being customers.

It will be seen from the sections quoted that a local option prohibitory by-law means absolute prohibition of the retail sale of liquor. The machinery for enforcement has been in course of development and improvement for many years, and is now very strong and effective.

WHOLESALE LIQUOR SELLING.

As the Act now stands a local option by-law does not prohibit the issue of licenses to sell liquor by wholesale. Section 4 of the Liquor License Act, however, defines the sale of liquor by wholesale as selling, bartering or trafficking in liquor in quantities of not less than five gallons each or in the case of lager beer four gallons, or in the case of bottled liquor, one dozen bottles of three half-pints.

Section 35 provides that wholesale licenses shall be issued only for premises on which is carried on no other business than that of wholesaling, and provides that the license shall be void if any retailing is done upon such premises.

Sections 41 and 44 provide that no wholesale license shall be issued for a less fee than \$250.

Section 61 prohibits the consumption of liquor on the premises on which it is wholesaled, or within any building which communicates in any way with such premises.

These restrictions are so stringent as to make wholesaling practically impossible except in a few very populous municipalities. There were last year only nine municipalities, six cities and three large towns, in which wholesale licenses were taken out. A local option by-law therefore amounts to total prohibition.

PENALTIES.

As stated the penalties imposed upon persons who sell liquor in local option municipalities are the same penalties that are now imposed on persons found guilty of selling liquor without license. They are set out in clause 70 of the License Act which reads as follows :—

70. "Any person who sells or barter spirituous, fermented or manufactured liquors of any kind, or intoxicating liquors of any kind, without the license therefor by law required, shall for the first offence on conviction thereof forfeit and pay a penalty of not less than \$50 besides costs, and not more than \$10 besides costs; and in default of payment thereof he shall be imprisoned in the county gaol of the county in which the offence was committed, for a period of not less than three months, and to be kept at hard labor in the discretion of the convicting magistrate; and for the second offence, on conviction thereof, such person shall be imprisoned in such gaol for the period of four months, to be kept at hard labor in the discretion of the convicting magistrate; and for the third or subsequent offence on conviction thereof, such person shall be imprisoned in some gaol for a period of six months, to be kept at hard labor in the discretion of the convicting magistrate; and in the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent.

The having or keeping liquor for sale is also an offence against the law, being a contravention of section 50 above quoted. It is an independent offence, and a person convicted of it, whether found guilty of selling liquor or not, is punishable by a fine of not less than \$20 and costs for a first offence, not less than \$40 and costs for a second offence with imprisonment at hard labor in case of default of payment, and for a third or subsequent offence imprisonment for three months at hard labor, without the option of a fine. Sec. 85 of Act sets this out.

If an officer of a municipal corporation is convicted of an offence under the Act, he shall also vacate his office and be disqualified from holding any such office for two years.

If an inspector or officer appointed by the government or commissioners prosecutes an offender under this Act, and a fine is imposed, such fine is paid at once into the license fund to be used for paying the expenses of enforcing

the law. If any other person is the prosecutor, the fine is paid to the treasurer of the municipality in which the offence was committed, and the municipal council is required to set apart not less than one-third of all such fines received, as a fund to secure prosecutions for violation of the law. These provisions are found in sections 89 and 90 of the Act.

ENFORCEMENT OF THE LAW.

The provisions for securing enforcement of the law are very complete. The most important are contained in the following sections of the License Act:—

DUTIES OF OFFICERS.

139. "Every officer appointed under this Act, every policeman, or constable, or inspector, shall be deemed to be within the provisions of this Act, and when any information is given to any such officer, policeman, constable or inspector, that there is cause to suspect that some person is violating any of the provisions of this Act, it shall be his duty to make diligent enquiry into the truth of such information, and enter complaint of such violation before the proper court, without communicating the name of the person giving such information; and it shall be the duty of the crown attorney, within the county in which the offence is committed, to attend to the prosecution of all cases committed to him by an inspector or officer appointed under this Act by the Lieutenant Governor."

POWERS OF OFFICERS.

130. "(1) Any officer, policeman, constable, or inspector may, for the purpose of preventing or detecting the violation of any of the provisions of this Act which it is his duty to enforce, at any time enter into any and every part of any inn, tavern, or other house or place of public entertainment, shop, warehouse or other place wherein refreshments or liquors are sold, or reputed to be sold, whether under license or not, and may make searches in every part thereof, and of the premises connected therewith, as he may think necessary for the purpose aforesaid."

(2) Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, constable, or inspector, or any such searches as aforesaid, shall be liable to the penalties and punishments prescribed by section 70 of this Act.

LIQUOR MAY BE DESTROYED.

132. When any inspector, policeman, constable or officer in making or attempting to make any search under or in pursuance of the authority conferred by the preceding two sections of this Act or under the warrant mentioned in the last preceding section, finds in an unlicensed house or place any spirituous or fermented liquor which in his opinion is unlawfully kept for sale or disposal contrary to this Act, he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place, or of any other person for keeping spirituous or fermented liquor for sale in such house or place without license, the justices make such conviction, may, in and by the said conviction, or by a separate or subsequent order, declare the said liquor and vessels, or any part thereof, to be forfeited to Her Majesty, and may order and direct that the said inspector, policeman, constable, or officer shall destroy the same or any part thereof, and the inspector or other person as aforesaid shall thereupon forthwith destroy the same or part thereof as directed by such conviction or order.

FREQUENTERS OF ILLICIT GROGGERIES.

(2) Any inspector, policeman, constable, or officer having in pursuance of the two preceding sections or either of them enter any unlicensed premises in which he seizes or from which he removes any such liquor as aforesaid, may demand the name and address of any person found in such premises, and if such person refuses to give his name and address, or if the inspector, policeman, constable or officer, has reasonable ground to suppose that the name or address given is false, may examine such person further as to the correctness of such name or address, and may if such person fail upon such demand to give his name or address or to answer satisfactorily the questions put to him by the inspector, policeman or officer, apprehend him without warrant, and carry him, as soon as practicable, before a justice of the peace.

Any person found on the premises aforesaid who in answer to the inspector, policeman, constable, or officer, refuses to give his name and address or to answer satis-

factorily the questions put to him by the inspector, policeman, constable or officer, shall be liable to a penalty of not less than \$10 nor more than \$20 besides costs, and in default of payment shall be imprisoned for a period of not less than twenty and not more than forty days.

PENALTY FOR DERELICT OFFICERS.

131. (1) It shall be the duty of every officer, policeman, constable or inspector in each municipality, to see that the several provisions of this Act are duly observed, and to proceed by information and otherwise prosecute for the punishment of any offence against the provisions of this Act; and in case of wilful neglect or default in so doing in any case, such officer, policeman constable or inspector, shall incur a penalty of \$10 for each and every such neglect and default.

(2) It shall be the duty of the board of commissioners and of the chief of police, to enforce the provisions of this section, and any officer or policemen convicted of violating the provisions thereof may be summarily dismissed.

EVIDENCE, ETC.

The law is very complete and distinct in its provisions as to what shall constitute evidence of sale or keeping for sale of liquor. It is the result of long experience and careful study, and effectively closes up many of the loop-holes through which offenders have heretofore been able to escape from the penalty of their wrong-doing. Some of the most important of these clauses are the following :—

APPLIANCES ARE EVIDENCE.

108. Any house, shop, room, or other place in which are proved to exist a bar, counter, beer pumps, kegs, jars decanters, tumblers, glasses, or any other appliance or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked, it shall be deemed a place in which spirituous, fermented or other manufactured liquors are kept or had for the purpose of being sold, bartered or traded in, under section 56 of this Act, unless the contrary is proved by

the defendant in any prosecution, and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffic therein.

CONSUMPTION IS PROOF.

109. In proving the sale or disposal, gratuitous or otherwise, or consumption of liquor for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any liquor was actually consumed, if the justices, police magistrate or court hearing the case is or are satisfied that a transaction in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises under license or in respect to which a license is required under this Act, by some person other than the occupier of said premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carrying away the same, as against the holder of the license or the occupant of the said premises.

THE OCCUPANT HELD RESPONSIBLE.

122. (1) The occupant of any house, shop, room or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act or thing in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed in sections 70 and 71 of this Act, as the case may be, notwithstanding such sale, barter or traffic, be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant, and proof of the fact of such sale, barter or traffic, or other act, matter or thing, by any person in the employ of such occupant, or who is supposed to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, or other act, matter or thing, took place with the authority and by the direction of such occupant.

(3) For the purposes of this section any person being an owner or lessee in actual occupation and possession of the premises, or any one who being in actual occupation and possession leases or sub-lets any part thereof in which liquors are kept for sale, barter or trading therein, or in which they are sold or consumed, shall be deemed to be an

occupant unless such leasing or sub-letting shall have received the consent in writing of the board of license commissioners.

REASONABLE EVIDENCE SUFFICIENT.

113. In any prosecution under this Act for the sale or other disposal of liquor without the license required by law, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal and certain knowledge, but the justices or police magistrate trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly.

WITNESSES MUST TESTIFY.

The authority and power of justices to secure evidence in cases of prosecution is very fully set out. Section 115 and 116 authorize them to summon any person, compel attendance if need be by warrant, and commit for contempt any person refusing to give evidence or produce any books, papers or documents asked for.

THE BUYER PUNISHED.

The law recognizes the important fact that a person who buys liquor on an unlicensed place is blamable as well as the person who sells it, and provides for his punishment by section 58 of the Act. There is no special penalty set out for the offender who buys liquor illegally. He is therefore punished by the penalty set out in clause 85 above mentioned, that is, he is punished with the same penalty applicable to a person who keeps liquor for sale without license.

CLUB SELLING.

Under previous prohibitory laws a good deal of trouble was caused by the formation of clubs, in which liquor was supplied to the members so as to evade the law, which from its wording did not always cover the case of liquor purchased by an organization and distributed among its members. The law as it now stands is found in section 53 of the Act as amended by the Act of 1890. It reads thus:—

53. (1) Any society, association or club which has been or shall be formed or incorporated under *The Act respecting Benevolent, Provident and other Societies* and any unincorporated society, association or club, and any member, officer or servant thereof, or person resorting thereto, who shall sell or barter liquor to any member thereof, or to any other person without the license therefor by this Act required, shall be held to have violated section 49 of this Act and shall incur the penalties provided for the sale of liquor without license.

(2) The keeping or having in any house or building, or in any room or place occupied or controlled by such club, association or society, or any member or members thereof, or by any person resorting thereto, of any liquor for sale or barter, shall be a violation of section 50 of this Act.

(3) Proof of consumption or intended consumption of liquor in such premises by any member of such club, association or society, or person who resorts thereto, shall be conclusive evidence of sale of such liquor, and the occupant of the premises or any member of the club, association or society or person who resorts thereto, shall be taken conclusively to be the person who has or keeps therein such liquor for sale or barter; and any liquor found upon such premises shall be liable to seizure in the manner provided by this Act.

OTHER PROVISIONS.

The preceding are only the more important provisions of this valuable legislation. The limits of this circular preclude further details.

Any further information respecting this legislation, or any other phase of our Canadian prohibitory work, will be promptly and cheerfully furnished to the extent of his ability, by the Secretary of the Dominion Alliance, to any friend of the prohibition cause applying to him either personally or by letter.

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